Rebuttal Testimony

of

David Rearden

Policy Program

Energy Division

Illinois Commerce Commission

Petition for approval of an Alternative Rate Regulation Plan pursuant to Section 9-244 of the Public Utilities Act

Commonwealth Edison Company

Docket No. 10-0527

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Introduction

Q. Please state your name, job title and business address.

A. My name is David Rearden and I am a Senior Economist on the Staff of the Illinois Commerce Commission ("Staff" or "Commission") in the Policy Program. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. Did you file direct testimony in this case?

A. Yes. My testimony is contained in Staff Ex. 1.0.

Q. What is the purpose of your rebuttal testimony?

A. I reply to Dr. Hemphill's rebuttal testimony, filed as ComEd Ex. 6.0.

Q. What are your conclusions?

A. I remain unconvinced that Rate ACEP meets the requirements of Section 9-244. The proposed tariff's reliance upon budgets as benchmarks is a fatal flaw that prevents it from meeting the statute's requirements. Further, ComEd's approach to demonstrating compliance also suffers from an important defect. On the one hand, according to ComEd, for the purposes of Section (b)(1) (rates must likely be lower under alternative regulation ("AR") than under traditional regulation ("TR")), the comparison is that the cost recovery for a project should be compared under both regulatory regimes. On the other hand, in order to investigate compliance with (b)(2) (projects under AR must have benefits not available under TR), ComEd argues that the comparison is to the situation where the project is not done, since it argues that it will not implement the project under

TR. Thus, ComEd wants the best of both worlds. But the costs are only incurred under TR if the project would be done under TR.

Q. What are your recommendations?

A. I recommend that the Commission reject Rate ACEP. I cannot find modifications to the tariff that allow it to comply with Section 9-244.

Q. Dr. Hemphill states that there are three "larger issues" that Rate ACEP is supposed to address. What are these "larger issues?" (ComEd Ex. 6.0, at pages 3-4)

A. The first issue is that Rate ACEP is merely a pilot to test alternative regulation. (ComEd Ex. 6.0, 3:53-59) His second "larger issue" is that Rate ACEP only applies to four programs,

> which will not be implemented under traditional regulation on the scale and scope envisioned here. Thus, all comparisons to a world in which those programs happen under traditional regulation are irrelevant. The counterfactual would never happen because the regulatory risk would be too great.

(*Id.*, 3:61-64)

His third "larger issue" repeats his point that Rate ACEP is a pilot to test a new way to recover costs.

Q. How do you respond to these "larger issues?"

A. First, I note that whether the filing is a pilot or temporary in nature is not germane to whether the Commission should approve it. If the filing does not meet the criteria of Section 9-244, then it should not be approved. The harm the tariff may cause to the public interest by raising customers' rates above what they would pay under TR could be mitigated by the arrangement being temporary, but its transience is certainly not an argument in its favor.

Second, there is an interesting point contained within Dr. Hemphill's arguments concerning his "larger issues." As quoted above, he appears to state that the counterfactual case to examine is not the same project funded by ratepayers under AR compared to funding under TR. According to Dr. Hemphill, the comparison should be that these projects are not done at all. However, in discussing his third "larger issue," Dr. Hemphill further states

> Arguing that Rate ACEP does not lower rates versus a hypothetical world in which additional programs are costless is pointless. Those programs are not free. The "low rate" counterfactual where program costs are never recovered is both irrelevant and misleading. So is the counterfactual where the programs are not done. Comparing scenarios in which different levels of service and investment are provided tells us nothing about whether alternative regulation is beneficial. That comparison, too, is irrelevant and misleading.

(ComEd 6.0, at page 4, lines 65-71)

Here he seems to argue that Staff and some Intervenors are comparing outcomes assuming the projects are implemented, but not paid for. And he further seems to suggest that Staff and some Intervenors are elsewhere comparing outcomes when the projects are not done. It is not clear from his testimony what his view is about which parties are doing which comparison. However, his statements open a doorway into a more systematic examination of what the proper comparison should be.

Q. Please discuss how the Commission can compare outcomes between AR and TR.

A. There are several ways in which the comparison might be made. For example, one way to compare outcomes is to assume that the project is implemented under both TR and AR. In my direct testimony, I discussed in some detail how this comparison should be made and noted that ComEd did not do it. Instead, Dr. Hemphill, in his rebuttal testimony, inquires how Rate ACEP should be evaluated when the project will not be executed under TR, which he asserts is ComEd's policy. He appears to have two answers. In his discussion concerning the second "larger issue," the comparison is to the case that the project is not done. However, in discussing the third "larger issue" he appears to argue that the costs for the project under TR must be used in the comparison. It is difficult to divine ComEd's position on the proper way to evaluate Rate ACEP given these two statements.

Q. How does Dr. Hemphill characterize testimony from Staff and the Intervenors concerning Rate ACEP?

A. He opines that Staff and Intervenors did not engage in a "constructive discussion on the future of alternative regulation." (ComEd Ex. 6.0, page 4, line 74) He further argues that parties "seem to be intractably opposed to alternative regulation." (ComEd Ex. 6.0, page 4, line 82)

Q. Is Staff "intractably opposed" to alternative regulation?

A. No. However, Staff's job is to closely scrutinize all AR proposals to examine whether they conform to Section 9-244. As fully explained in my direct testimony, TR remains an efficient and equitable arrangement for both shareholders and ratepayers. (See, for example, the first section of Staff Ex. 1.0, pages 6-12) Therefore, any AR proposal has a relatively high hurdle to clear under (b)(1). Further, Section 244(b) permits a utility to reject any AR plan after the Commission has modified it, which grants it further protection from any arrangement that it believes is less favorable than TR.

Q. Dr. Hemphill speculates on the motives that parties have for their opposition to AR. How do you respond?

A. He first asserts that it is "…simply due to the newness of the concept." (*Id*., line 84) Since various proposals for AR have been discussed in the literature and proposed before various state utility commissions for many years, this is unlikely to be an accurate explanation and rather underestimates the hundreds of pages of rebuttal testimony filed in opposition to Rate ACEP. Next, he offers that it is "…rooted in a desire to maintain the opportunity to disallow actual capital and operating costs in a rate case, after they are already incurred." (*Id*., lines 83-85) As a partial explanation, this is valid, though retaining the ability to prevent customers from paying excessive charges from imprudent investments does not necessarily have a negative connotation, in my view. Rather, the risk that imprudently incurred costs are not recovered is a point in TR's favor. Indeed, the potential for disallowances provides an incentive for the utility to manage its projects in a prudent manner. And removing this threat does "'shift risks' to customers." (*Id*., lines 86-87) A fair AR proposal must compensate ratepayers in some way for that shift in risk. In my view, Rate ACEP does not offer such a tradeoff.

Q. Dr. Hemphill indicates in his testimony that ComEd will not enter into these projects without the certainty that it will recover its costs. (See ComEd Ex. 6.0, at pages 4-5) How do you respond?

A. During its 100 year history of providing electric service, ComEd has managed to fund large additions to its capital stock under TR. It funded and constructed a fleet of nuclear plants costing billions of dollars under TR. After Chicago's Loop experienced widespread problems in the late 1990s, it invested hundreds of millions of dollars in its distribution facilities under TR. Now, however, ComEd asserts it is unable to fund $35 million in capital investment and include $35 million in rates for O&M expenses without Commission pre-approval for cost recovery.

Q. Are the projects that ComEd is currently proposing necessary for it to provide efficient and sufficient service?

A. According to Dr. Hemphill, no. At page 5 (lines 94-96), he states

> The reality is that these investments simply will not be undertaken under a regulatory structure where ComEd can be left holding the bag and must fight, after the fact, for even partial recovery of its costs.

Here I presume that the regulatory structure referred to is TR. It seems obvious that only if there is controversy over whether the spending is needed for utility service, or if needed, whether it is excessive, would there be any concern about cost recovery. See Staff witness Stoller's rebuttal testimony (Staff Ex. 13.0) for why there should be little doubt about whether ComEd could recover the costs for well-justified infrastructure projects. Further, Staff is actively recommending that the Commission order ComEd to implement the UUFR project. (See John

Stutsman's direct and rebuttal testimonies, Staff Ex. 4.0 and 11.0) On the next page (lines 119-120) of Dr. Hemphill's rebuttal testimony, he also notes that "These programs are not being offered as necessary to fulfill ComEd's ongoing regulatory minimum requirement to provide adequate and reliable service."

Q. Does Dr. Hemphill believe that the projects that ComEd is proposing in this docket are beneficial?

A. Yes. He states that they can provide "huge benefits." (*Id*., 5:97) Also, the projects were picked for their "potential benefit to customers…and which I believe outweigh their costs." (*Id*., 6:122-124) Also, "While I believe the net benefits of modernization could be substantial, this does not necessarily mean that ComEd needs to pursue such an approach to fulfill its service obligations." (*Id*., 23:511-513) In describing how he foresees the process playing out, he notes that, "Before approving the Rate ACEP investments, the Commission will consider the investment and O&M budgets as a tool to determine whether the programs are indeed likely to result in net benefits to customers." (*Id*., 11:242-244) Also, at page 11, lines 239-240, Dr. Hemphill states that one element of Rate ACEP is that ComEd will "make discretionary investments out of a conviction that their benefits will be greater than their costs."

Q. Can projects that have substantial net benefits be imprudent?

A. I cannot categorically answer yes or no. It seems unlikely to me that for the routine sorts of projects that ComEd is proposing in this docket that a project with net benefits would be declared imprudent. The situation is much less clear for AMI and other Smart Grid projects. There, the consideration and calculus is much more complex. That is one reason why, as advocated by Staff witness Dr. Schlaf (Staff Ex. 3.0, Staff Ex. 10.0), Smart Grid projects should not be part of Rate ACEP at this time.

Q. Staff and the Intervenors wrote a considerable amount of testimony defending TR as a viable, efficient and sustainable method to regulate ComEd. How did Dr. Hemphill respond to these points?

A. For the most part, he dismisses the arguments out of hand. Dr. Hemphill states in his rebuttal that, "…this dispute is beside the point." (*Id*., 7:142-143) All that matters are the eight requirements contained in Section 244(b). He also notes that

> The eight requirements of Section 9-244 do not include a showing that traditional, test-year regulation has failed; nor do they include a requirement that the alternative regulation be the only possible regulatory approach to accomplishing these programs.

(*Id*., 145-147)

Q. How do you respond?

A. Dr. Hemphill opened the issue of TR's effectiveness. Whether TR is a better way to regulate ComEd than AR is entirely relevant to issues at stake in this docket. Dr. Hemphill has exaggerated TR's faults in an attempt to make Rate ACEP look better by comparison. By correcting for that faulty view, the Commission can more clearly examine the tradeoffs that ratepayers and shareholders face from Rate ACEP relative to TR. Further, the first requirement under 244(b) is that "…the program is likely to result in rates lower than otherwise would have been in effect under traditional rate of return regulation for the services covered by the program." The comparison between Rate ACEP and TR is entirely pertinent to the decision the Commission must make.

Budgets as benchmarks

Q. Dr. Hemphill continues to defend Rate ACEP's approach to use budgets as benchmarks. (Section III.A. of ComEd Ex. 6.0) Do you think he effectively responded to the points made by Staff and the Intervenors?

A. No. My direct testimony (Staff Ex. 1.0, at pages 17-20), as well as in Intervenor direct testimony (IIEC Ex. 1.0, 11:247-251; AG Ex. 1.0, 20:428-432; AARP Ex. 1.0, 19:429-433), repeatedly emphasized the point that under Rate ACEP, ComEd has very strong incentives to increase the budget. Dr. Hemphill disputes that incentive in his rebuttal testimony. He responds in part:

> I want to register ComEd's vociferous objection to the contention, implied or otherwise, that ComEd either has deliberately proposed, or intends to propose, inflated budgets for the Rate ACEP programs.

(ComEd. Ex. 6.0, 14:304-306)

In my direct testimony, I argued that ComEd has an incentive under its proposed Rate ACEP to increase the budget. It's simply true that a higher budget never reduces ComEd's cost recovery and could raise it. Staff witness Hinman, in her direct and rebuttal testimonies (Staff Ex. 2.0 and 9.0), raises various issues with how ComEd supports its EVP budget. Her analysis also indicates that some EVP costs are overestimated.

A second point that Dr. Hemphill makes is that the budgets are based upon "vendor proposals and on the costs ComEd has incurred in the past …[and it]…

has documented how it derived its budget proposals." He further argues that "…this fluctuation [apparently referring to actual costs from the budget] can go both ways to the benefit or detriment of ComEd." He concludes that, "Either way, the Commission knows up front what the programs will cost customers." (*Id*., 14:309-15:313) Again, I was not specifically addressing the way in which ComEd constructed the budget under consideration here, but the fact that it is a benchmark. Since the profits that ComEd can earn are a function of the budget, because of the profit motive, it has an incentive to increase the budget. For example, as noted in Staff witness Hinman's rebuttal testimony in Staff Ex. 9.0, while ComEd was aware of the tax credits currently available to purchase electric vehicles, it did not include them as a potential item in the budget. If Staff had not raised the issue in its testimony, the excess costs would have been simply rolled in to rates.

Dr. Hemphill also claims that

> while ComEd's actual expenditures could deviate from the budgets, the deviation could go either way. This is the risk ComEd accepts. However, the budgets provide a powerful incentive mechanism for ComEd to out-perform the budget, which is precisely what the Commission should want. These benefits will be shared with customers.

(*Id*.,15:314-318)

While this does not directly address the incentive that ComEd has to increase the budget, it is another argument that Dr. Hemphill offers to support budgets as benchmarks. Given a budget, Rate ACEP does give ComEd an incentive to hold spending down. But this is largely beside the point. Under TR, ComEd has largely the same incentive. For projects whose costs have not yet been included in rates, there is an incentive to spend more (but not so much as to be declared imprudent). However, once those costs have been included in rates, ComEd has the incentive to economize. Rate ACEP is thus not so different from TR: when the 'budget' is set, ComEd wants it higher, but afterwards, it wants to economize on actual spending.

Q. Where else does Dr. Hemphill argue that budgets are an efficacious method to constrain ComEd and induce it to economize?

A. There are several other places in Dr. Hemphill's rebuttal testimony where he makes such statements. On page 10, starting at line 201, he argues

> …a budget can be a very effective tool for measuring and verifying the performance of the program…. Because the budget will limit what ComEd can collect from the Rate ACEP programs, ComEd will have a strong incentive to meet or beat the budget targets. If ComEd cannot beat the budget targets, Rate ACEP will still have worked in the sense that it will have protected customers from risks that ComEd was willing to take itself.

On pages 11 and 12, he notes that "During the operation of the program, the budget will be a powerful incentive mechanism for ComEd to operate efficiently." At page 12, lines 247-248, he states "Customers will benefit from the programs and the efficiency improvements that will result from ComEd having to adhere to investment and O&M budgets." On page 14 (lines 290-292), he further opines, "…in Rate ACEP, the budget numbers are binding, with consequence if ComEd is unable to meet them."

Q. Please respond to this argument.

A. These statements can only be correct under the assumption that the budgets are set in a vacuum. But before the budget is fixed, ComEd maximizes its expected profits by generating a larger budget.

Q. If a budget-based AR method provides an incentive to economize, why do you oppose Rate ACEP?

A. First, the incentive is no stronger than under TR, since under TR utilities have the incentive to spend efficiently after costs are included in rates. Second, budgets are not set in a vacuum, but depend upon information that the utility is much more acquainted with than the Commission or Intervenors could be. The budget setting process is thus intrinsically flawed, since ComEd knows much more about its costs and operations than any outside entity could possibly learn in a reasonable period of time. Third, the costs are affected by market prices over which ComEd does not have control. If investment equipment prices differ from the prices that are used in the budget, then actual spending will differ from planned spending, without any differences in efficiency.

Q. In his rebuttal testimony, Dr. Hemphill contends that you state that the budget's "incentive effects are not likely to be strong enough to restrain costs." (ComEd Ex. 6.0, 17:369-370) Does he characterize your testimony accurately?

A. No.[1] In my direct testimony at page 17, lines 379-392, I argued that the incentives in Rate ACEP are not strong enough to restrain spending below what

[1] The actual question from Staff Ex. 1.0 is "Do you think that it is likely that the incentive effects are sufficiently strong to overcome Rate ACEP's quicker cost recovery?" See ComEd's response to DTR 4.7.

would occur under TR. The question and answer in my direct testimony directly addressed whether Rate ACEP would lead to rates being lower under it than under TR, which is required by Section 244(b)(1). Instead, Dr. Hemphill has transformed that contention in my direct testimony into his incorrect claim that I do not believe a fixed budget can exert any restraint on spending.

Q. How does Dr. Hemphill argue that the budgets established in Rate ACEP affect ComEd's profits?

A. Dr. Hemphill argues

> If ComEd is able to beat the budget benchmarks its profits will be higher; these profits will be shared with customers. Mr. Rearden's apparent view of the profit motive is contradicted by virtually every economics text book, all of which explain the powerful impact the profit motive has on a firm's incentives to improve efficiency. This essential truth underpins the success of businesses in the free enterprise system. ComEd has every incentive to perform well because of the larger potential benefits at stake.

(*Id.*, 17:371-376)

Q. How do you respond?

A. Aside from the extraneous comments about the profit motive and the free enterprise system as well as his misinterpretation of my testimony, he makes a somewhat valid, if largely, irrelevant point. With a fixed budget, there is some incentive to keep spending below the budget. But an analogous motive exists within TR as well; when including costs in rates, ComEd wants costs high, but after the costs are incorporated into rates, it has an incentive to economize. Further, the incentives generated by Rate ACEP are less than perfect. When spending is below 95% of the budget, then ComEd shares in the difference between the budget and actual spending. On the other hand, if spending is above 95% of the budget, then ComEd recovers only costs expended—it increases profits by spending more (up to 105% of the budget), since actual investment is recovered in rates. Additionally, the project is deemed prudent, so ComEd has no risk that all costs may be disallowed. Further, it is eligible to recover at least 95% of O&M expenses up to the $2 million limit for all Rate ACEP projects.

Q. Does Dr. Hemphill argue that the budgeting process is reasonable?

A. Yes. On page 10, lines 261-262, he states, "I see no reason why designing alternative regulation based directly on the budgets themselves presents the challenge the parties say it does." He further argues that when constructing budgets,

> ComEd must provide initial, good-faith estimates of these budgets, as well as the work papers and analyses that produced the budgets. ComEd's assumptions and numbers can be double checked, and the budgets can be altered if appropriate.
>
> Staff and Intervenors perform similar budget reviews when evaluating the prudence of ComEd's spending decisions after the fact in rate cases.

(ComEd 6.0, 13:281-286)

In addition, he argues that "Ultimately, these sorts of disagreements [referring to disputes over what the budget should be] could be resolved around a conference table, instead of through litigation." (*Id*., 14:299-300)

Q. How do you respond to these points?

A. As I noted in my direct testimony, ComEd has far more information about its operations and how much investments in it should cost than Staff can readily develop. The same is true for O&M expenditures.

Q. Dr. Hemphill also claims that a benefit of the budgeting approach is that the maximum cost for a project is known beforehand. (*Id*., 15:312-313; 15:323-325; 16:353-354) Do you agree?

A. No. Dr. Hemphill acknowledges that ComEd can attempt to recover costs above the amounts budgeted (or overruns) that it incurs. (*Id*., 17: 361-363) He further claims that overruns are "subject to the same regulatory risk" that it would face under TR. But he does not resolve the contradiction between his statement about the budget establishing a known maximum cost and the fact that ComEd reserves the right to recover all its investment costs without regard to the project's budget.

ComEd also reserves the same right to try to recover overruns on O&M, despite Dr. Hemphill's protests to the contrary. ("No recovery of O&M 'overruns' is possible." *Id*.) Rate ACEP states on page X+20, "…the Company may request that any unrecovered expense amounts…be included in the Company's revenue requirement for such general rate case and amortized over a period approved by the ICC." These opportunities to fund unrecovered costs conflict with ComEd's promise that the budget is the maximum amount that ratepayers have to pay for the project.

Q. Dr. Hemphill argues that under Rate ACEP ComEd faces a risk that its spending on a project might exceed the project's budget, and it may not recover those costs. (*Id*., 16:340-342) Are the risks to ComEd's earnings from exceeding its budget equal to the risk that its expenditures fall below the budget?

A. No. There are several reasons why the risks are not symmetric. First, the budget is not set in stone: ComEd can attempt to recover overruns in rate cases. So even if ComEd spends more than it can initially recover, it can seek to recapture the shortfall in a rate case. Second, as noted in my direct testimony, it has an incentive to make the budget larger. A larger budget means ComEd is less likely to exceed it and more likely to come in under budget. Third, it has an incentive to declare a project finished when it nears the 95% and 105% of the budget. With respect to this point, Dr. Hemphill argues that the final determination is the Commission's to make. But some projects are, like UUFR, open-ended, and that makes it difficult to know when it is 'complete.' For example, the Commission's scope for action is unclear if ComEd stops a project and declares it complete but the Commission disagrees. The Commission may find it difficult to evaluate the project and determine the costs that ComEd should or should have recovered. For all these reasons, the consequences that ComEd faces for exceeding the budget can be, from ComEd's point of view, remedied, but ratepayers have much less protection in case the project's cost is over-estimated.

Q. Are the projects included in Rate ACEP prudent?

A. No, not according to Dr. Hemphill. He states that in several places. For example, on page 24, lines 520-522, he states "These programs are not necessary for the provision of adequate and reliable service…[and]…filing for a CPCN [Certificate of Public Convenience and Necessity] is not a viable option." My understanding is that a CPCN for a project would not be a viable option if it did not promote and was not necessary to the public convenience. It would be difficult to claim that costs incurred for such a project had been prudently incurred. Dr. Hemphill also makes this point on page 6, lines 199-121, where he states

> These programs are not being offered as necessary to fulfill ComEd's ongoing regulatory minimum requirement to provide adequate and reliable service. Indeed, ComEd's current service already amply meets its service obligations.

If the Commission follows Dr. Hemphill's logic here, the counterfactual case for whether Rate ACEP passes 244(b)(1) and (b)(2) should be that the projects are not done. Under TR, the projects would not be funded because they are imprudent.

Compliance with Section 244(b)

Q. How did Dr. Hemphill defend compliance with Section 244(b)(1)?

A. In his rebuttal, he avers that the 5% discount on O&M cost recovery is a definitive benefit for ratepayers, along with the "extra incentives to save" due to the budget. (*Id.*, 40:886-889) He quotes my direct testimony that provides the theoretical conditions under which Rate ACEP might comply with the law, and further avers that "having to recover the costs of Rate ACEP programs in a traditional rate case would, all else equal, decrease the time between rate cases." (*Id*., 41:897-899)

Q. Do you agree that ComEd has shown that Rate ACEP complies with Section 244(b)(1)?

A. No. First, the 5% discount is more a guideline than a binding constraint, since as pointed out above, ComEd explicitly reserves the right to recover any shortfalls. Second, the discount is limited to $2 million over all projects. Third, the budgets which will allegedly induce ComEd to restrain spending below counterfactual TR levels are based more on trust than evidence. For example, see Ms. Hinman's rebuttal testimony (Staff Ex. 9.0), in which she discusses the EV Pilot budget. Fourth, as noted in my direct testimony, the calculations that could demonstrate compliance with 244(b)(1) require significantly more analysis than ComEd has heretofore engaged in. ComEd needs to calculate the difference in customers' rates between TR and Rate ACEP that are likely to occur over time. And it should make its assumptions clear about how it is likely to incur costs and how quickly those costs are likely to be recovered in rates under TR and Rate ACEP. ComEd has not adequately examined these issues.

Q. Dr. Hemphill argues that your mistake in discussing whether the Low Income Assistance Program complied with Section 9-244(b)(2) was that you failed to realize that only the customers served under the program need to derive benefits. (*Id*., 43:947-954) How do you respond?

A. I have two reactions. First, there are many ways that programs to aid low income families could be funded. The benefits to low income customers are not uniquely available only under Rate ACEP, so if Rate ACEP is not approved, any benefits from a low income program are available "in the absence of the program." Second, under Dr. Hemphill's logic, many such reallocation programs could comply with Section 244(b)(2), if the Commission only need consider the extent to which one group benefits without regard to the costs imposed on other customers.

Q. Dr. Hemphill also notes that you ignore the benefits from the low income program that "might mitigate some of the costs recovered under UF." (*Id*.) How do you respond?

A. The entire program simply re-allocates funds between ratepayer groups. To the extent that funds are not collected under Rate ACEP, they would be collected under Rider UF. There do not appear to be any efficiency gains.

Conclusion

Q. Please summarize your testimony.

A. I respond to Dr. Hemphill's rebuttal testimony. I find that ComEd has yet to demonstrate that its proposed Rate ACEP complies with Section 9-244. In particular, using budgets as benchmarks dooms the proposal. In addition, Dr. Hemphill's testimony obfuscates the wider issues concerning the projects that are at issue in this proceeding. Dr. Hemphill also claims that the Rate ACEP projects are not prudent. The Commission should never require ratepayers to fund projects that are not prudent. Further, by arguing that the Rate ACEP projects are imprudent, Dr. Hemphill also undermines his test for compliance with the law: under TR, ComEd would not be able to recover the costs for these projects in rates. Therefore, under Dr. Hemphill's analysis, the cost to ratepayers for the projects would be zero under TR.

Q. What are your recommendations?

A. I recommend that the Commission reject Rate ACEP. Rate ACEP is not an improvement on traditional rate of return regulation. In particular, I do not believe that it complies with Section 9-244(b)(1) and (b)(2), and I cannot find modifications that conforms the tariff to Section 9-244.

Q. Does this conclude your rebuttal testimony?

A. Yes.